

As a general proposition, the Department considers dietary supplements to fall within the definition of food. See 86 Ill. Adm. Code 130.310. (This is a GIL).

June 10, 1999

Dear Ms. Xxxxx:

This letter is in response to your letter dated April 23, 1999. The nature of your letter and the information you have provided require that we respond with a General Information Letter, which is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120(b) and (c), enclosed.

In your letter, you have stated and made inquiry as follows:

COMPANY, is a manufacturer of personal and homecare products. These products are sold throughout the United States to independent distributors, who both wholesale to other COMPANY distributors and retail to consumers.

COMPANY has an agreement with your state to act as the collection agent on all sales of COMPANY products sold by distributors in your state.

To insure compliance with your state tax laws, we request a ruling on the tax status of the following product (s):

PRODUCT1
PRODUCT2

We believe that the above are food products, which are exempt from sales tax or at a reduced rate in your state. To assist you in making your determination, I have enclosed a copy of the sales literature for each of the above product(s).

Please direct your reply to the attention of the undersigned. If you have any further questions regarding this matter, please contact me at your convenience.

Thank you for your cooperation.

We have enclosed a copy of 86 Ill. Adm. Code 130.310, "Food, Drugs, Medicines and Medical Appliances." This regulation describes how sales of food can be subject to either low (1%) or high (6.25%) rates under the Retailers' Occupation Tax Act. Local sales taxes may also apply, depending upon where retail sales are made.

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All sales by retail establishments that provide facilities for on-premises consumption of food are subject to the high rate of tax unless the establishments utilize separate means of collection and physically partition the areas in which food not for immediate consumption is sold, 86 Ill. Adm. Code 130.310(b)(2)(A).

If businesses do not provide facilities for on-site consumption, they must charge the high rate on all food sales if a majority of their gross receipts from food sales is for items sold in a state of preparation for immediate consumption (prepared by the retailer so as to be eaten without substantial delay after the final act of preparation) and would charge the low rate on all food sales (except for hot foods, foods prepared by the retailer for immediate consumption, soft drinks and alcoholic beverages) if a majority of their gross receipts from food sales is for items sold in bulk.

As a general proposition, the Department considers dietary supplements and drink mixes such as those described in your correspondence to fall within the definition of food. As a result, the appropriate tax rate for such items is determined in accordance with the above enumerated principles. Distributors who sell dietary supplements and powder drink mixes will incur liability at the State tax rate of 1%, so long as those distributors do not sell other food items in a state of preparation for immediate consumption.

I hope this information is helpful. The Department of Revenue maintains a Web site, which can be accessed at www.revenue.state.il.us. If you have further questions related to the Illinois sales tax laws, please contact the Department's Taxpayer Information Division at (217) 782-3336.

If you are not under audit and you wish to obtain a binding Private Letter Ruling regarding your factual situation, please submit all of the information set out in items 1 through 8 of the enclosed copy of Section 1200.110(b).

Very truly yours,

Karl W. Betz
Associate Counsel

KWB:msk
Enc.